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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Courthouse News Service,

Plaintiff,

v.

David Yamasaki, in his official capacity as Court Executive Officer/Clerk of the Orange County Superior Court,

Defendant.

Case No. 8:17-cv-00126 AG (KESx)

Assigned for all purposes to
Hon. Andrew J. Guilford

DEFENDANT DAVID YAMASAKI'S OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Date: January 29, 2018
Time: 10:00 a.m.
Courtroom: 10D
Judge: Hon. Andrew J. Guilford

Defendant David Yamasaki, in his official capacity as Court Executive Officer/Clerk of the Orange County Superior Court ("OCSC") submits the following evidentiary objections to the declarations of William Girdner, Joanna Mendoza, Craig Rosenberg, Jonathan Fetterly, accompanying exhibits thereto, exhibits attached to ECF No. 12, and exhibits attached to ECF No. 92 referenced by Plaintiff Courthouse News Service ("CNS") In Support of Its Opposition to OCSC's Motion for Summary Judgment. OCSC respectfully requests the Court sustain the below objections and strike the following evidence.

I. OBJECTIONS TO DEPOSITION OF WILLIAM GIRDNER

OBJECTION NO. 1:

"CNS's news media subscribers rely on us to provide them with timely information about civil litigation, our specialty, so they can provide information about those cases to their own readers and viewers. In recent years, as the traditional news industry has withered, we have seen an increasing number of news organizations become CNS subscribers. At the same time, we have seen news organizations cut back on court coverage. The end result is that in many courts CNS effectively serves as a pool reporter, with its reporter sometimes the only journalist reporting on that court." (ECF No. 86, Declaration of William Girdner ("Girdner Decl.") ¶ 12, 5:13-20.)

GROUNDS FOR OBJECTION NO. 1:

Lack of foundation as to personal knowledge; speculation. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his speculative statement as to what CNS subscribers purportedly "rely on" CNS to provide. He further fails to establish foundation for his assertion regarding how other news organizations handle "court coverage." As a result, his concluding sentence regarding the "end result" necessarily lacks foundation as well.

OBJECTION NO. 2:

"I have observed a longstanding tradition in state and federal courts throughout the country whereby news reporters review new complaints on the day they are received, before clerks performed the administrative tasks that follow a court's receipt of a new complaint." (ECF No. 86, Girdner Decl. ¶ 19, 8:11-14.)

GROUNDS FOR OBJECTION NO. 2:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his purported observance of "a longstanding tradition in state and federal courts around the country," or even which courts those are. Mr. Girdner also purports to state a legal conclusion in this context by opining as to a purported tradition. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986). In addition, Mr. Girdner's statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card" published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Declaration of Cary D. Sullivan ("Sullivan Decl.") ¶ 2, Ex. A (pp. 6-23).

OBJECTION NO. 3:

"Before the advent of e-filing, federal and state courts in California typically gave reporters access to the day's complaints by providing them in paper form in a box, bin or stack on, behind, beside, or near the intake counter at the end of the day, when courthouse beat reporters would visit the court to learn what had been filed that day." (ECF No. 86, Girdner Decl. ¶ 20, 8:16-20.)

GROUNDS FOR OBJECTION NO. 3:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertion as to what California state and federal courts "typically" did before the advent of e-filing, and which courts those are. Moreover, Mr. Girdner's statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card" published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

OBJECTION NO. 4:

"The tradition of press access was alive and well in the superior courts of California when the paper medium was dominant…. Many of the superior courts that had bad grades on the Report Card were willing to return traditional access to news reporters…. These courts are addressed in detail in the declarations submitted by myself, and current and former CNS employees, in the *Courthouse News v. Planet* case." (ECF No. 86, Girdner Decl. ¶ 33, 14:20-15:18.)

GROUNDS FOR OBJECTION NO. 4:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his purported observance of "a tradition of press access," or even which courts observed such a tradition. Mr. Girdner also purports to state a legal conclusion in this context by opining as to a purported tradition. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986). In addition, Mr. Girdner's statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card" published by CNS demonstrating that,

even in California alone, there is no such tradition. ECF No. 75-6, Declaration of Cary D. Sullivan ("Sullivan Decl.") ¶ 2, Ex. A (pp. 6-23).

OBJECTION NO. 5:

"…he [Alan Carlson] stated that he does not believe the press should have access to new civil actions e-filed in his court until after they are officially "accepted" into the court's docketing system." (ECF No. 86, Girdner Decl. ¶ 34, 15:23-25.)

GROUNDS FOR OBJECTION NO. 5:

Inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Mr. Carlson's purported out-of-court statement, which is being offered for the truth of the matter asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. § 801:5 (8th ed. 2017) ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained."). In addition, Mr. Girdner's statement is contradicted by Mr. Carlson himself. *See* ECF No. 17-8, Declaration of Alan Carlson In Support of Opposition to Motion for Preliminary Injunction ("Carlson Decl."), ¶¶ 3-4.

OBJECTION NO. 6:

"After the remodel, the clerk then leased a room to The Orange County Register directly across from the viewing area for court records, a room which I understand, based on CNS's coverage of the court, that newspaper still leases today." (ECF No. 86, Girdner Decl. ¶ 45, 19:24-27.)

GROUNDS FOR OBJECTION NO. 6:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his purported knowledge regarding whether and how the OCSC clerk supposedly leased space to the Orange County Register. This statement is also directly contradicted by the reply declaration of Jeff Wertheimer in which Mr. Wertheimer describes how the State of California

owns the building that houses OCSC's Central Justice Center, and how the State – not OCSC – leases space in the building to each of the tenants in the building, including the Orange County Register. Declaration of Jeff Wertheimer In Support Of Reply ("Wertheimer Decl. ISO Reply") ¶ 2. This statement is further contradicted by David Yamasaki's deposition testimony to the same effect. Declaration Cary D. Sullivan In Support of Reply ("Sullivan Decl. ISO Reply") ¶ 7; Ex. E, David Yamasaki Deposition Testimony ("Yamasaki Depo."), 114:16-21.

OBJECTION NO. 7:

"Based on my review of the transcript of Mr. Yamasaki's deposition in this case, it is my understanding there is no reason, other than OCSC's current process-first policy, why OCSC could not put a computer terminal into that room for the press to review new complaints as they are received and before processing, including complaints that are e-filed after the clerk's office closes for the day, which under OCSC local rules are given that day's "filed" date if filed before midnight." (ECF No. 86, Girdner Decl. ¶ 45, 20:3-8.)

GROUNDS FOR OBJECTION NO. 7:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertions regarding OCSC's purported "policy" as well as whether and how OCSC can place its public computer terminals. Further, Mr. Girdner's suggestion that OCSC could place a terminal in a room that it leases to the Orange County Registered is based on a false premise – that OCSC somehow controls the room. As demonstrated in Mr. Wertheimer's reply declaration and Mr. Yamasaki's deposition testimony, OCSC does not lease space to The Register, nor does OCSC have any right to use or place anything in The Register's room, because The Register leases that space directly from the State of California. Wertheimer Decl. ISO Reply ¶ 2; Sullivan Decl. ISO Reply ¶ 7, Ex. E, Yamasaki Depo., 114:16-21.

OBJECTION NO. 8:

"In 2002, OCSC supervisor Connie Pilcher called a meeting to tell news reporters covering the court that they would no longer see new complaints in the press box at the end of the day, and would henceforth be required to review them on the day following receipt." (ECF No. 86, Girdner Decl. ¶ 46, 20:9-13.)

GROUNDS FOR OBJECTION NO. 8:

Inadmissible hearsay. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Ms. Pilcher's purported out-of-court statement, which is being offered for the truth of the matter asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. § 801:5 (8th ed. 2017) ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

OBJECTION NO. 9:

"Ms. Levitzky began to express sympathy and some agreement with our request, …Mr. Slater acknowledged that press access to new complaints had been delayed by at least four or five days but expressed the view that such delays were just fine. He was adamant in his refusal to consider our request to reinstate traditional press access on the day of filing, and made it clear he was willing to litigate the matter." (ECF No. 86, Girdner Decl. ¶ 47, 20:17-22.)

GROUNDS FOR OBJECTION NO. 9:

Inadmissible hearsay; lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 801, 802; Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner's assertions regarding Ms. Levitzky's and Mr. Slater's purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not

approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

Mr. Girdner also fails to establish foundation for his assertion regarding the purported "traditional press access on the day of filing," which statement is contradicted by evidence in any event, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card" published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A(pp. 6-23).

OBJECTION NO. 10:

"…Ms. Mehta informed the clerk's staff that because of the delays, the Times had largely stopped reporting on new cases filed in that court. She explained that reporters could not 'sell' a breaking story to editors when it was a day old." (ECF No. 86, Girdner Decl. ¶ 48, 21:1-4.)

GROUNDS FOR OBJECTION NO. 10:

Inadmissible hearsay. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Ms. Mehta's purported out-of-court statements, offered for the truth of the matters asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

OBJECTION NO. 11:

"And it has been CNS's experience that the more important and newsworthy actions tend to be filed late in the day, making them particularly prone to extended delays in press access where courts condition access on processing." (ECF No. 86, Girdner Decl. ¶ 53, 22:13-16.)

GROUNDS FOR OBJECTION NO. 11:

Lack of foundation as to personal knowledge; irrelevant; misleading and

prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Mr. Girdner fails to establish foundation for his assertion regarding "more important and newsworthy actions" supposedly being filed "late in the day," nor does he identify or provide data to support this bald assertion. Moreover, the assertion is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evidentiary Objections ("CNS Evid. Obj."), 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus on supposedly "newsworthy" complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

OBJECTION NO. 12:

"Since the *Times* no longer staffs OCSC with a reporter, and the story was written from Sacramento, it is very likely the complaint was forwarded to the *Times* by the plaintiff attorney, allowing the *Times* to play up the story while beating its rival of old, *The Orange County Register*." (ECF No. 86, Girdner Decl. ¶ 58, 24:10-13.)

GROUNDS FOR OBJECTION NO. 12:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertion that "the Times no longer staffs OCSC with a reporter." He further fails to establish foundation for his speculation as to how the Times received the subject complaint. As set forth in Ms. Ochoa's reply declaration, the subject complaint was made public at 9:28 a.m. on August 29, 2017, the morning of the day the Times published its story. Declaration of Sara Ochoa In Support Of Reply ("Ochoa Decl. ISO Reply") ¶ 6. Mr. Girdner fails to explain why the Times would supposedly be unable to access the complaint

on the public docket and draft and publish a story about the complaint in the 5½ hours between when the complaint was made public and when the Times published its story at 3:00 p.m. that afternoon.

OBJECTION NO. 13:

"As a result of the Clerk's process-first policy, reporting on an important complaint against a celebrated local business was held up by 23 and 26 normal hours." (ECF No. 86. Girdner Decl. ¶ 58, 24:15-17.)

GROUNDS FOR OBJECTION NO. 13:

Lack of foundation as to personal knowledge; irrelevant; misleading and prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Mr. Girdner fails to establish foundation for his assertion regarding OCSC's "policy." Moreover, this assertion is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus on supposedly "important" or newsworthy complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

OBJECTION NO. 14:

"[Ms. Levitzky] informed me that she discussed the matter with her supervisor, who flatly denied the delays." (ECF No. 86, Girdner Decl. ¶ 61, 25:25-26:1.)

GROUNDS FOR OBJECTION NO. 14:

Inadmissible hearsay. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Ms. Levitzky's purported out-of-court statement, as well as that of her "supervisor," both of which are offered for the truth of the matters asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to

prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

OBJECTION NO. 15:

"At that meeting, Mr. Carlson acknowledged that there was a delay between when the court received a civil complaint fore-filing and when it became available to the press and public. He said the delay was due to a backlog in processing other filings before his staff processed new complaints." (ECF No. 86, Girdner Decl. ¶ 64, 26:20-24.)

GROUNDS FOR OBJECTION NO. 15:

Inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Mr. Carlson's purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained."). Mr. Girdner's assertion is also contradicted by Mr. Carlson himself. *See* Carlson Decl., ¶¶ 3-4.

OBJECTION NO. 16:

"Mr. Carlson acknowledged then in 2010 that the in-box was 'technically possible,' or words to that effect…" (ECF No. 86, Girdner Decl. ¶ 65, 27:1-2.)

GROUNDS FOR OBJECTION NO. 16:

Inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Mr. Carlson's purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained."). Mr. Girdner's assertion is also contradicted by Mr. Carlson himself. *See* Carlson

Decl., ¶ 5.

OBJECTION NO. 17:

"In the meeting with Mr. Carlson, he argued with vehemence that the press had no right to see a filing until his staff had completed administrative processing, saying words to the effect, 'It's not filed until I put my stamp on it.'" (ECF No. 86, Girdner Decl. ¶ 66, 5:7.)

GROUNDS FOR OBJECTION NO. 17:

Inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 801, 802.

Mr. Girdner's assertion regarding Mr. Carlson's purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. Mr. Girdner's assertion is also contradicted by Mr. Carlson himself. *See* Carlson Decl., ¶¶ 3-4.

OBJECTION NO. 18:

"The introduction of e-filing rules was accompanied by what I saw as a pincer movement to degrade traditional timely access. The first part of the pincer movement was a proposed rule that gave clerks a justification for withholding access until new filings were processed." (ECF No. 86, Girdner Decl. ¶ 75, 30-15-18.)

GROUNDS FOR OBJECTION NO. 18:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence; inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

Mr. Girdner opines as to a so-called "pincer movement" without establishing foundation that such a movement is anything more than a figment of his own imagination. Moreover, Mr. Girdner's implication of a conspiracy is directly contradicted by the California Rules of Court, which provide that e-filing "does not include the processing and review of the document, and its entry into the court records, which are necessary for a document to be officially filed." *See* Cal. R. Ct. 2.250(B)(7).

OBJECTION NO. 19:

"Similarly, state courts in Alabama, Connecticut, Georgia, Nevada, New York, Utah, and most recently, in Fresno County, California, also provide electronic access to new e-filed civil complaints upon receipt, before processing. As with federal district courts, there are variations in how the state courts provide that access. Such access can be provided online over the Internet, locally through terminals at the courthouse, or through both methods. In some courts, new e-filed actions are automatically accepted, while in others complaints bear only temporary numbers when they first appear in the electronic in-box and receive a permanent case number only after administrative tasks are completed. Some jurisdictions limit electronic in-box access to credentialed press, while others open the in-box to any interested member of the public. In some jurisdictions, the press can review late filed e-filed complaints at the courthouse, as they are received, in press rooms even after the clerk's office has shut for the night. In all instances, the method used provides timely access to new civil complaints as soon as they are filed, upon receipt, before they are processed, akin to the pre-docketing access traditionally provided to paper-filed complaints." (ECF No. 86, Girdner Decl. ¶ 92, 26:8-23.)

GROUNDS FOR OBJECTION NO. 19:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertions regarding the various practices ascribed to state and federal courts across the country, and he fails to identify the specific courts referenced. Moreover, Mr. Girdner's assertions are contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card" published by CNS demonstrating that, even in California alone, there is no such

tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

In addition, Mr. Girdner purports to state a legal conclusion as to whether and how various purported methods provide "timely access" to new complaints.

OBJECTION NO. 20:

"Implementing an electronic in-box is a matter of fairly basic programming by court IT staff or e-filing vendors. I understand from the clerk for Georgia's Fulton County Superior Court that when that court decided to set up its electronic in-box, its e-filing vendor was able to do so quickly and at no cost to the court." (ECF No. 86, Girdner Decl. ¶ 93, 36:24-37:1.)

GROUNDS FOR OBJECTION NO. 20:

Lack of foundation as to personal knowledge; speculation; inadmissible hearsay. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

Mr. Girdner fails to establish foundation for his assertion regarding whether and how "an electronic in-box" could be added through "fairly basic programming," to OCSC's court case management system ("CCMS"). Mr. Girdner has no personal knowledge regarding OCSC's CCMS, and cannot establish otherwise, rendering his suggestion pure speculation.

In addition, Mr. Girdner's assertion regarding the Georgia clerk's purported out-of-court statements, offered for the truth of the matter asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

OBJECTION NO. 21:

"The ease with which courts have been able to set up electronic in-boxes is consistent with my own experience based on supervising CNS 's programmers who configure our subscribers' means of accessing CNS content electronically." (ECF No. 86, Girdner Decl. ¶ 93, 37:8-11.)

GROUNDS FOR OBJECTION NO. 21:

Lack of foundation as to personal knowledge; irrelevant. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402.

Mr. Girdner fails to establish foundation for his purported knowledge regarding "the ease with which courts have been able to set up electronic in-boxes," and he fails to identify any of the courts with which he's supposedly familiar.

In addition, Mr. Girdner's purported "experience supervising CNS's programmers who configure our subscribers' means of accessing CNS content electronically" is irrelevant with respect to court e-filing systems. Because Mr. Girdner fails to establish foundation for any purported relation between court e-filing systems, including OCSC's CCMS (about which Mr. Girdner has no personal knowledge, and he cannot establish otherwise), and CNS's own electronic systems, which do not involve any sort of court filings, such that Mr. Girdner's assertion is irrelevant as a matter of fact.

OBJECTION NO. 22:

"On December 11, 2017, I communicated via email with Fresno Superior Court's manager in charge of its Case Management System, Kevin Anderson. In this e-mail exchange, Mr. Anderson explained how Fresno County Superior Court designed and successfully implemental a technological security option that safeguarded confidential filings from public view in the press review site. A true and correct copy of this email string is attached at Exhibit 20." (ECF No. 86, Girdner Decl. ¶ 100, 42:19-24.)

GROUNDS FOR OBJECTION NO. 22:

Inadmissible hearsay; violation of the Best Evidence Rule; contradicted by evidence. Fed. R. Evid. 801, 802; Fed. R. Evid. 1002.

Mr. Girdner's assertions regarding Mr. Anderson's purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5

("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

In addition, Mr. Girdner's characterization of Mr. Anderson's statements is contradicted by the attached email string, which speaks for itself, and in which Mr. Anderson relays that the changes were made by an outside vendor, and that Mr. Anderson lacks any personal knowledge about them. *See* ECF No. 87, Ex. 20 to Girdner Decl. (pp. 544-557).

OBJECTION NO. 23:

"Other state courts that provide electronic access to new e-filed civil complaints upon receipt, before clerk review or processing, include Fresno Superior Court in California, four courts in Georgia (the State Court of Fulton County, the Superior Court of Fulton County, the State Court of DeKalb County, and the Superior Court of DeKalb County), Hartford County Superior Court in Connecticut, Jefferson County Circuit Court in Alabama, Salt Lake County Court (Third Judicial District) in Utah, and the Eighth Judicial District Court of Nevada." (ECF No. 86, Girdner Decl. ¶ 111, 50:21-27.)

GROUNDS FOR OBJECTION NO. 23:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402.

Mr. Girdner fails to establish foundation for his assertions regarding the practices ascribed to the various courts. Moreover, Mr. Girdner's assertions are contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card" published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

In addition, Mr. Girdner does not state that such electronic access means *public* access, thereby rendering the assertion irrelevant as a matter of fact.

OBJECTION NO. 24:

"The Clerk's Office at OCSC has followed a similar roller coaster when it comes to processing. Measured over five days just before May 29, 2016, when Judge James Otero handed down his motion for summary judgment ruling in the Planet case, the OCSC Clerk's Office was taking two days to process, providing access to only 6% of the new unlimited complaints on the day of filing, and withholding 82% for two days or more. After the ruling, the Clerk's Office sped up processing and by mid-August 2016, nearly half of the unlimited complaints, 51.5%, could be seen on the day of filing with a lesser 9.4% withheld for two days or more. But by early October 2016 the Clerk's office had dropped down low again and was processing only 12.9% on the day of filing while withholding 59.5% for two days or more." (ECF No. 86, Girdner Decl. ¶ 131, 62:5-15.)

GROUNDS FOR OBJECTION NO. 24:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish any foundation whatsoever for the cited statistics. Mr. Girdner fails to establish any analytical foundation for how he arrived at these statistics, fails to establish any foundation for his purported personal knowledge of the statistics, and further fails to identify or provide source data for the statistics themselves.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2,

Declaration of Sara Ochoa ("Ochoa Decl.") ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Declaration of Deborah T. Kruse ("Kruse Decl.") ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, CNS's Opposition to OCSC's Motion for Summary Judgment ("Opp."), 15:1-16:14.

OBJECTION NO. 25:

"In the next year, 2017, the Clerk's Office followed the same pattern. The week before the complaint in CNS v. Yamasaki was filed on January 24, 2017, the Clerk's Office was processing, and providing access to, only 21% of new unlimited complaints on the day of filing and 19.8% were withheld two days or more. In early February, the percentage of cases processed and able to be seen on the day of filing jumped up to 44.1% with 13.3% withheld two days or more. Then began a series of ups and downs, dropping to 22.1% of complaints processed and provided on the day of filing in early April, rising to 62.4% in mid-May, dropping to 8.4% in mid-July then jumping to 55.1% in mid-September, before dropping down to 39.8% being processed and provided to the press and public on the day of filing in mid-October 2017, with 11.8% withheld two days or more." (ECF No. 86, Girdner Decl. ¶ 132, 62:16-26.)

GROUNDS FOR OBJECTION NO. 25:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish any foundation whatsoever for the cited statistics. Mr. Girdner fails to establish foundation for his purported personal knowledge of the statistics and further fails to establish foundation, and fails to identify or provide source data, for the statistics themselves.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary

injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14.

OBJECTION NO. 26:

"But the roller coaster is most pronounced in the Complex Division of OCSC, where the most important and newsworthy litigation is filed. In January of 2017, prior to CNS's filing of its complaint in this action, the complex unit provided access to only 3.2% of the newly filed complex complaints on the day of filing. In the month of February 2017, that percentage jumped modestly to 29.2%. The pace continued to ramp up to a peak of 42.1% in August 2017. In other words, timely access was provided to less than half the cases when the unit was working at its fastest pace. The processing rate then began to slide, dramatically. In October, only 13.5% of the new complex cases could be reviewed on the day they were filed, and by the end of December 2017, the monthly rate of access on the day of filing had dropped to 9.8%, back to the bottom where the roller coaster started out in late January." (ECF No. 86, Girdner Decl. ¶ 133, 63:5-16.)

GROUNDS FOR OBJECTION NO. 26:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Mr. Girdner fails to establish any foundation whatsoever for the cited statistics. Mr. Girdner fails to establish foundation for his purported personal knowledge of the statistics and further fails to establish foundation, and fails to identify or provide

source data, for the statistics themselves.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14.

Mr. Girdner also fails to establish foundation for his assertion regarding "most important and newsworthy litigation" supposedly being civil complex actions. Moreover, this assertion is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus on supposedly "newsworthy" civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

OBJECTION NO. 27:

"In sum, the statistics show that for the 488 complex complaints filed in 2017, about one fifth (21.9%) were made available without delay. The bulk of the complex complaints (78%) were withheld for one to seven days while they were processed. That set of withheld complex cases was about evenly split between two fifths (39.5%) that were withheld one day and two fifths (38.5%) that were withheld for two days up to seven days. By even the most elastic interpretation of the word 'timely,' such

access cannot be considered timely access." (ECF No. 86, Girdner Decl. ¶ 134, 62:22-64:2.)

GROUNDS FOR OBJECTION NO. 27:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish any foundation whatsoever for the cited statistics. Mr. Girdner fails to establish foundation for his purported personal knowledge of the statistics and further fails to establish foundation, and fails to identify or provide source data, for the statistics themselves.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14.

In addition, Mr. Girdner's assertion is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

Finally, Mr. Girdner's opinion as to what does or does not constitute "timely access" is an inadmissible legal conclusion.

OBJECTION NO. 28:

"I understand that Mr. Yamasaki distinguishes the Judge Otero's ruling in the Planet case by saying Ventura sees a much lower volume of complaints than does OCSC." (ECF No. 86, Girdner Decl. ¶ 138., 64:23-25.)

GROUNDS FOR OBJECTION NO. 28:

Lack of foundation as to personal knowledge; inadmissible hearsay. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

Mr. Girdner fails to establish foundation for his purported knowledge of Mr. Yamasaki's thoughts and opinions regarding the *Planet* case. And to the extent Mr. Girdner offers Mr. Yamasaki's out-of-court statements regarding the Planet case, offered for the truth of the matter asserted, that constitutes inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

OBJECTION NO. 29:

"But a small coterie of clerks primarily in Southern California does not see it that way. Operating under the flag of new technology. they have blocked timely access by news reporters. Their determination to withhold press access has persisted in the face of two Ninth Circuit opinions and three district court opinions, one from a California district court, in large part because they are protected from any consequence by the financial backing of an opaque central bureaucracy which. in a demonstration of power and insularity, is using public funds to fight against-public access." (ECF No. 86, Girdner Decl. ¶ 142, 66:6-13.)

GROUNDS FOR OBJECTION NO. 29:

Lack of foundation as to personal knowledge; inadmissible hearsay; improper legal conclusion. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid.

801, 802.

Mr. Girdner fails to establish foundation for his assertions regarding the purported views and "determination" of court clerks in Southern California. Mr. Girdner further fails to establish foundation for his assertion regarding their "financial backing." He also fails to establish foundation for his assertion regarding the "bureaucracy['s]" use of "public funds" and related intent.

To the extent Mr. Girdner purports to relay out-of-court statements of the clerks, for the truth of the matters asserted, that constitutes inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

Mr. Girdner also purports to state inadmissible legal conclusions regarding whether "timely access" has been or is being provided.

II. OBJECTIONS TO DEPOSITION OF JOANNA MENDOZA

OBJECTION NO. 30:

"I understand from my editor, William Girdner, that before I began covering OSC, the court provided access to newly filed civil unlimited complaints, which were at that time filed in paper form, by placing the complaints in a box, which members of the media would access in the records area at the end of each court day." (ECF No. 88, Declaration of Joanna Mendoza ("Mendoza Decl.") ¶ 5, 1:24-27.)

GROUNDS FOR OBJECTION NO. 30:

Lack of foundation as to personal knowledge; inadmissible hearsay. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

Ms. Mendoza fails to establish foundation for her personal knowledge regarding the matters stated; she purports merely to rely comments from Mr. Girdner. Accordingly, because Ms. Mendoza purports to offer Mr. Girdner's out-of-court statements for the truth of the matters asserted, that also constitutes

inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

OBJECTION NO. 31:

"A court security guard in the complex building has informed me that I am not permitted to use the terminal for more than a short period of time because it is regularly used by members of the public. He also told me that court security officers clear the area where the terminal is located shortly after 4:00 each day." (ECF No. 88, Mendoza Decl. ¶ 11, 3:27-4:2.)

GROUNDS FOR OBJECTION NO. 31:

Inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 801, 802.

Ms. Mendoza offers the security guard's purported out-of-court statements for the truth of the matters asserted, constituting inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained."). Such statements are also contracted by Mr. Wertheimer's reply declaration. Wertheimer Decl. ISO Reply ¶¶ 5-7.

OBJECTION NO. 32:

"They are also the complaints that are withheld from public review for the greatest amount of time." (ECF No. 88, Mendoza Decl. ¶ 13, 4:16-17.)

GROUNDS FOR OBJECTION NO. 32:

Inadmissible hearsay; contradicted by evidence; irrelevant; prejudicial. Fed. R. Evid. 801, 802; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish any foundation whatsoever for the cited calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation for how she or her CNS team arrived at these numbers, fails to establish any foundation for her purported personal knowledge of the qualitative conclusions, and further fails to identify or provide source data for the calculation itself.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14.

Ms. Mendoza also fails to establish foundation or relevance for her focus on civil complex actions. Indeed, this assertion is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

OBJECTION NO. 33:

"For purposes of analyzing the OCSC Turnaround Reports to measure the actual delays experienced by CNS, I treated new civil complaints processed after 4 p.m. on a given day as having been made available on the next day the court was open, because that would have been the first opportunity anyone would have to see the complaint without paying a viewing fee of between $7.50 and $40. For purposes of my analysis, I counted new civil complaints received on weekends and holidays as being received on the next court day, which I understand is consistent with court rules." (ECF No. 88, Mendoza Decl. ¶ 24, 4:8-15.)

GROUNDS FOR OBJECTION NO. 33:

Contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 403.

Ms. Mendoza's self-serving attempt to mischaracterize OCSC's "Turnaround Reports" by calculating "new civil complaints processed after 4 p.m. on a given day as having been made available on the next day the court was open," is contrary to the undisputed evidence (the "Turnaround Reports" themselves) and ignores that all complaints made available on the public docket are available 24 hours a day through the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88, Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access complaints that way is neither relevant nor does it constitute good cause to mischaracterize the results to make it seem like complaints are being made available later than they really are.

Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended confuse and mislead the Court, and is therefore prejudicial.

OBJECTION NO. 34:

"The results of my analysis of the OCSC Turnaround Reports for all new civil complaints filed between Jan. 1, 2017 and Oct. 18, 2017 is reflected in the attached Exhibit 5. This summary in Exhibit 5 reflects that the same data OCSC used to calculate its assertion that 95.97% of unlimited civil complaints filed between Jan. l, 2017 to Oct. 18, 2017 were "published" within eight "business hours," shows that I was not able to see more than half (56.9%) of them on the day the court received them for filing. OCSC withheld 45.8% of the civil unlimited cases for one day, and

withheld another 11.1% for two to thirteen days." (ECF No. 88, Mendoza Decl. ¶ 25, 8:16-23.)

GROUNDS FOR OBJECTION NO. 34:

Lack of foundation as to personal knowledge; contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 403.

Ms. Mendoza fails to establish foundation for the cited statistics and further fails to provide her calculations.

In addition, Ms. Mendoza's self-serving attempt to mischaracterize OCSC's "Turnaround Reports" by calculating "new civil complaints processed after 4 p.m. on a given day as having been made available on the next day the court was open," is contrary to the undisputed evidence (the "Turnaround Reports" themselves) and ignores that all complaints made available on the public docket are available to the public 24 hours a day through the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88, Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access complaints that way is neither relevant nor does it constitute good cause to mischaracterize the results to make it seem like complaints are being made available later than they really are.

Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

OBJECTION NO. 35:

"Also reflected in Exhibit 5 is the fact that the OCSC Turnaround Reports

show that access in some weeks was especially bad. Of the civil unlimited complaints filed the week of July 17 - 23, for example, 91.6% were withheld until at least the following court day after they were received for filing." (ECF No. 88, Mendoza Decl. ¶ 26, 8:24-27.)

GROUNDS FOR OBJECTION NO. 35:

Lack of foundation as to personal knowledge; contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 403.

Ms. Mendoza fails to establish any foundation whatsoever for the cited calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation for how she or her CNS team arrived at these numbers, fails to establish any foundation for her purported personal knowledge of the qualitative conclusions, and further fails to identify or provide source data for the calculation itself.

In addition, Ms. Mendoza's self-serving attempt to mischaracterize OCSC's "Turnaround Reports" by calculating "new civil complaints processed after 4 p.m. on a given day as having been made available on the next day the court was open," is contrary to the undisputed evidence (the "Turnaround Reports" themselves) and ignores that all complaints made available on the public docket are available 24 hours a day through the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88, Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access complaints that way is neither relevant nor does it constitute good cause to mischaracterize the results to make it seem like complaints are being made available later than they really are.

Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual

numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

OBJECTION NO. 36:

ECF No. 88, Exhibit 5 to Mendoza Decl. (pp. 96-99).

GROUNDS FOR OBJECTION NO. 36:

Lack of foundation as to personal knowledge; contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 403.

Ms. Mendoza fails to establish any foundation whatsoever for the cited calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation for how she or her CNS team arrived at these numbers, fails to establish any foundation for her purported personal knowledge of the qualitative conclusions, and further fails to identify or provide source data for the calculation itself.

Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

OBJECTION NO. 37:

"Through an analysis of OCSC's data for January 1, 2017 -October 18, 2017, supplemented by information from the Register of Actions and payment receipts for cases filed from October 19, 2017 - December 19, 2017, I noted the following elements associated with the filing, processing and public availability of a complex complaint: (1) filing date; (2) case number with the complex suffix CXC; (3) date

and time on which the complaint was received; (4) date and time on which the complex complaint was processed (from October 19 through December 29, time of processing is based on payment receipts and is unavailable for complaints filed with fee waivers, which are listed in the summary with a date and an asterisk); and (5) delay between when the complaint was received and the processing time, which serves as a reliable indicator of when the complaint first becomes available for viewing. In preparing this summary, I excluded cases with a "CXC" designation that were assigned to Judge Bauer because he is a non-complex judge and it appears those cases received the CXC suffix only because Judge Bauer's courtroom is located in the complex building. The summary also excludes a small number of cases that were misfiled as complex, but are not complex cases per the Register of Actions." (ECF No. 88, Mendoza Decl. ¶ 29, 9:18-10:5.)

GROUNDS FOR OBJECTION NO. 37:

Lack of foundation as to personal knowledge; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding (1) Judge Bauer's supposed assignment; (2) "cases that were misfiled as complex"; and (3) the additional information with which she purported supplemented OCSC's "Turnaround Reports," which information she also fails to identify or provide.

In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' or complex complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

OBJECTION NO. 38:

"Exhibit 6 shows that on the day they were filed I was not able to see more than three-quarters (78%) of the 488 complex civil unlimited complaints filed between January 1, 2017 and December 29, 2017. The court withheld more than one third (39.5%) of the complex civil unlimited cases for one day. The court withheld more- than another third (38.5%) for two to seven days. The average delay for all these complex cases was 1.7 days beyond the day they were received by OCSC." (ECF No. 88, Mendoza Decl. ¶ 31, 10:11-16.)

GROUNDS FOR OBJECTION NO. 38:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding (1) Judge Bauer's supposed assignment; (2) "cases that were misfiled as complex"; and (3) the additional information with which she purported supplemented OCSC's "Turnaround Reports" , which information she also fails to identify or provide.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' or complex complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore also prejudicial.

OBJECTION NO. 39:

ECF No. 88, Exhibit 6 to Mendoza Decl. (pp. 100-116).

GROUNDS FOR OBJECTION NO. 39:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish any foundation whatsoever for the cited calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation for how she or her CNS team arrived at these numbers, fails to establish any foundation for her purported personal knowledge of the qualitative conclusions, and further fails to identify or provide source data for the calculation itself.

Further, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are

based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy or complex complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore also prejudicial.

OBJECTION NO. 40:

"Within the last group of complaints that were delayed from two to seven days, the court withheld 29 .3% of those complex civil unlimited complaints for three days or more, and it withheld 13.7% of the complex civil unlimited complaints for four days or more. The average delay for the complex civil unlimited cases falling within this group was 3.4 days beyond the day they were received by OCSC." (ECF No. 88, Mendoza Decl. ¶ 32. 10:17-21.)

GROUNDS FOR OBJECTION NO. 40:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the additional information with which she purported supplemented OCSC's "Turnaround Reports" , which information she also fails to identify or provide.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only "newsworthy" or complex complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore also prejudicial.

OBJECTION NO. 41:

"The unavailability of the complex civil complaints for between one to seven days after filing has…" (ECF No. 88, Mendoza Decl. ¶ 33, 10:22-23.)

GROUNDS FOR OBJECTION NO. 41:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the additional information with which she purported supplemented OCSC's "Turnaround Reports" , which information she also fails to identify or provide.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy or complex complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore also prejudicial.

OBJECTION NO. 42:

"The delays that naturally result from OCSC's practice of withholding complaints until after processing…" (ECF No. 88, Mendoza Decl. ¶ 45, 14:15-16.)

GROUNDS FOR OBJECTION NO. 42:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Ms. Mendoza fails to establish foundation for her assertion of OCSC's purported "practice of withholding complaints until after processing." Moreover, this assertion is contradicted by the declarations of Sara Ochoa and Debbie Kruse submitted with OCSC's moving papers, both of which make clear that OCSC's LPSs review all civil unlimited complaints in the order received and as quickly as possible. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 25-27; ECF No. 75-3, Kruse Decl. ¶¶ 8-10. OCSC does not withhold anything.

OBJECTION NO. 43:

"…for the complex cases in 2017, took up to seven days." (ECF No. 88, Mendoza Decl. ¶ 46, 15:4-5.)

GROUNDS FOR OBJECTION NO. 43:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the additional information with which she purported supplemented OCSC's "Turnaround Reports" , which information she also fails to identify or provide.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While

CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant as a matter of fact by CNS's repeated admission in its evidentiary objections to OCSC's summary judgment motion that, "Courthouse News Service is not requesting that the OCSC identify and promptly publish only 'newsworthy' or complex complaints; it is asking that OCSC make all complaints available the same day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant and can only be intended to confuse or mislead the Court, and is therefore also prejudicial.

OBJECTION NO. 44:

"OCSC provides *Orange County Register* reporters with a dedicated working room across the hall from the Records Area." (ECF No. 88, Mendoza Decl. ¶ 47, 15:6-7.)

GROUNDS FOR OBJECTION NO. 44:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701..

Ms. Mendoza fails to establish foundation for her purported knowledge regarding whether and how OCSC supposedly "provides Orange County Register reporters with a dedicated working room across the hall from the Records Area." This statement is also directly contradicted by the reply declaration of Jeff Wertheimer in which Mr. Wertheimer describes how the State of California owns the building that houses OCSC's Central Justice Center, and how the State – not OCSC – leases space in the building to each of the tenants in the building, including the

Orange County Register. Wertheimer Decl. ISO Reply ¶ 2. This statement is further contradicted by David Yamasaki's deposition testimony to the same effect. Declaration Cary D. Sullivan In Support of Reply ("Sullivan Decl. ISO Reply") ¶ 7; Ex. E, Yamasaki Depo., 114:16-21.

OBJECTION NO. 45:

"…understand from *Register* reporters that they are permitted to work in that room as late as they wish after the court closes to the general public at 5 p.m." (ECF No. 88, Mendoza Decl. ¶ 47, 15:8-10.)

GROUNDS FOR OBJECTION NO. 45:

Inadmissible hearsay; irrelevant. Fed. R. Evid. 801, 802; Fed. R. Evid. 401, 402.

Ms. Mendoza purports to relay comments from Orange County Register reporters regarding whether they are permitted to work late in the room that The Register leases from the State of California. Because the comments are being offered for the truth of the matter asserted, they constitute inadmissible hearsay.

In addition, because the State of California owns the building that houses OCSC's Central Justice Center, and because the State – not OCSC – leases space in the building to each of the tenants in the building, including the Orange County Register, Wertheimer Decl. ISO Reply ¶ 2; Sullivan Decl. ISO Reply ¶ 7, Ex. E, Yamasaki Depo., 114:16-21, whether and how The Register's reporters use The Register's privately leased space is irrelevant as a matter of fact.

III. OBJECTIONS TO DEPOSITION OF CRAIG ROSENBERG, Ph.D.

OBJECTION NO. 46:

"Based on my review of that material and my experience, I am of the opinion that the method that the Orange County Superior Court ("OCSC") currently uses to secure the confidentiality of complaints that are conditionally sealed (i.e., filed with a motion or a request to seal) or required to be kept confidential by statute is not

optimal and could be improved quickly and easily by OCSC programmers, while at the same time allowing the public to have access to non-confidential complaints as soon as the complaints are electronically received by OCSC and before manual clerk review." (ECF No. 89, Declaration of Craig Rosenberg ("Rosenberg Decl. ") ¶ 5, 3:10-17.)

GROUNDS FOR OBJECTION NO. 46:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of (1) OCSC's CCMS; (2) "the method that [OCSC] currently uses to secure the confidentiality of complaints that are conditionally sealed … or required to be kept confidential by statute"; and (3) whether and how CCMS "could be improved quickly and easily by OCSC programmers." Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programming or creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality, nor is he qualified to opine as to what may or may not be possible with respect to re-programming the system to add new features or functions. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 US 137 (1999); *Avila v. Willits Envtl. Remediation Tr.*,

633 F.3d 828, 839 (9th Cir. 2011) (courts properly exclude expert testimony where expert offers opinions outside area of expertise).[1]

Furthermore, Dr. Rosenberg's opinions on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison v. Quest Diagnostics Inc.*, 2016 WL 3457725, at *3–4 (D. Nev. June 23, 2016) (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th Cir. 1998). Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning underlying his opinions. That is fatal. An expert must, at minimum, provide the basis for his scientific conclusions. *See, e.g.*, *Diviero v. Uniroyal Goodrich Tire Co.*, 114 F.3d 851, 853 (9th Cir. 1997). If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Finally, Dr. Rosenberg's opinions on these matters should be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, 257 F.R.D. 607, 611 (E.D. Cal. 2009). Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data considered by the witness in

[1] The current summary judgment briefing schedule does not allow sufficient time for Yamasaki to formally notice a motion to exclude Dr. Rosenberg's testimony under *Daubert* prior to the scheduled hearing. Yamasaki reserves the right to notice such a motion at a future date.

forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l, Inc. v. Bestex Co.*, 2007 WL 2947564, at *8-9 (C.D. Cal. Feb. 9, 2007). Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings, Inc. v. Texaco Ref. & Mktg., Inc.*, 2001 WL 1398403, at *6 (C.D. Cal. Oct. 29, 2001) (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

OBJECTION NO. 47:

"Given these facts, it would be more efficient and less prone to errors for the Court to modify its e-filing system so that the e-filers themselves would be required to check a single box or select one of two radio buttons (that would be functionally equivalent to the check box) to indicate that the filing contains confidential information." (ECF No. 89, Rosenberg Decl. ¶ 7, 4:1-5.)

GROUNDS FOR OBJECTION NO. 47:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of (1) OCSC's CCMS; (2) the functionality of CCMS with respect to designation of confidential complaints or complaints that are to be sealed; and (3) whether and how

CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programming or creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality, nor is he qualified to opine as to what may or may not be possible with respect to re-programming the system to add new features or functions. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers opinions outside area of expertise).

Furthermore, Dr. Rosenberg's opinion on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning underlying his opinions. That is fatal. An expert must, at minimum, provide the

basis for his scientific conclusions. *See, e.g.*, *Diviero*, 114 F.3d at 853. If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Dr. Rosenberg's opinions on these matters should also be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data considered by the witness in forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL 1398403, at *6 (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

In addition, Dr. Rosenberg's assertion that a check-box or push-button feature would be "more efficient and less prone to errors" is based on a demonstrably false premise – that filers always comply with filing requirements regarding confidential

complaints. OCSC has already establishes numerous examples where filers disregarded an express requirement to note confidential treatment on the caption page of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact number of these examples, CNS concedes that 13 confidential complaints would have been made public but for LPS review. ECF No. 84, CNS Response to OCSC SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS review, more than a dozen confidential complaints would have been made public. Consequently, because we know that leaving the confidentiality determination to filers is not a failsafe approach, LPS review would still be required for the Court to fulfill its obligation to do all it can to ensure that complaints that are required by law to be kept confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc. v. Mundy*, 209 Cal. App. 4th 132, 149 (2012); Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

OBJECTION NO. 48:

"OCSC's current procedure of relying on the LPS to review a text box for e-filer comments and the face page of the complaint amplifies the potential for human error. First, OCSC's current system requires the e-filer to remember to request confidentiality where appropriate (either explicitly, or by referencing one of several categories of confidential complaints by name or code section) rather than explicitly requiring the e-filer to address the question of confidentiality. Second, an e-filer entering comments into a free-form text box might not use the key words or code section the LPS looks for to identify confidentiality. Third, even if thee-filer uses these key terms, the LPS can overlook them despite their best diligence. At the same time, the LPS review does nothing to improve the appropriate selection of a security level because the reviewing LPS relies on the e-filer to designate a complaint as

"confidential," "secret," or conditionally "sealed" by using those words or referencing one of several categories of confidential complaints by name or code section in the comments box or on the complaint's face page." (ECF No. 89, Rosenberg Decl. ¶ 8, 4:23-5:9.)

GROUNDS FOR OBJECTION NO. 48:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of 1) OCSC's CCMS; and 2) the functionality of CCMS with respect to designation of confidential complaints or complaints that are to be sealed. Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programming or creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers opinions outside area of expertise).

Furthermore, Dr. Rosenberg's opinion on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate

personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning underlying his opinions. That is fatal. An expert must, at minimum, provide the basis for his scientific conclusions. *See, e.g.*, *Diviero*, 114 F.3d at 853. If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Finally, Dr. Rosenberg's opinions on these matters should be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data considered by the witness in forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL

1398403, at *6 (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

OBJECTION NO. 49:

"Additionally, providing the security level check box or radio buttons at the user interface is a relatively simple and inexpensive task. I have read portions of Mr. Yamasaki's deposition where he acknowledges that such a solution is clearly possible and within the capacity of OCSC's Court Technology services department, which is evidently currently working to upgrade OCSC's case management system." (ECF No. 89, Rosenberg Decl. ¶ 9, 5:10-14.)

GROUNDS FOR OBJECTION NO. 49:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of 1) OCSC's CCMS; 2) the functionality of CCMS with respect to designation of confidential complaints or complaints that are to be sealed; and 3) whether and how CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programming

or creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality, nor is he qualified to opine as to what may or may not be possible with respect to re-programming the system to add new features or functions. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers opinions outside area of expertise).

Furthermore, Dr. Rosenberg's opinion on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning underlying his opinions. That is fatal. An expert must, at minimum, provide the basis for his scientific conclusions. *See, e.g.*, *Diviero*, 114 F.3d at 853. If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Dr. Rosenberg's opinions on these matters should also be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data

considered by the witness in forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL 1398403, at *6 (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

In addition, Dr. Rosenberg's basic assertion that a check-box or push-button feature would be better is based on a demonstrably false premise – that filers always comply with filing requirements regarding confidential complaints. OCSC has already established numerous examples where filers disregarded an express requirement to note confidential treatment on the caption page of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact number of these examples, CNS concedes that 13 confidential complaints would have been made public but for LPS review. ECF No. 84, CNS Response to OCSC SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS review, more than a dozen confidential complaints would have been made public. Consequently, because we know that leaving the confidentiality determination to filers is not a failsafe approach, LPS review would still be required for the Court to fulfill its obligation to do all it can to ensure that complaints that are

required by law to be kept confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

OBJECTION NO. 50:

"None of these concerns should present an issue for implementing the improved, safer, and more efficient user interface proposed above. First, thee-filing system can easily assign a temporary case number or other identifier automatically as soon as the complaint is e-fil~ and that number can subsequently be automatically linked to and replaced by a permanent case number assigned by the LPS at a later time. Programming these system upgrades is a relatively simple and short task. Second, the Court can easily program its system to post a notice in the initial public access screen that a complaint has not been officially accepted by the Court and may be rejected for a variety of issues, such as non-payment of fees. Programming these system upgrades is also a relatively simple and inexpensive task." (ECF No. 89, Rosenberg Decl. ¶ 11, 5:25-6:7.)

GROUNDS FOR OBJECTION NO. 50:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of 1) OCSC's CCMS; 2) the functionality of CCMS with respect to designation of confidential complaints or complaints that are to be sealed; and 3) whether and how CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV

reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programming or creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality, nor is he qualified to opine as to what may or may not be possible with respect to re-programming the system to add new features or functions. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers opinions outside area of expertise).

Furthermore, Dr. Rosenberg's opinion on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning underlying his opinions. That is fatal. An expert must, at minimum, provide the basis for his scientific conclusions. *See, e.g.*, *Diviero*, 114 F.3d at 853. If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Dr. Rosenberg's opinions on these matters should also be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil

Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data considered by the witness in forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL 1398403, at *6 (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

In addition, Dr. Rosenberg's assertion that a check-box or push-button feature would be more efficient is based on a demonstrably false premise – that filers always comply with filing requirements regarding confidential complaints. OCSC has already established numerous examples where filers disregarded an express requirement to note confidential treatment on the caption page of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact number of these examples, CNS concedes that 13 confidential complaints would have been made public but for LPS review. ECF No. 84, CNS

Response to OCSC SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS review, more than a dozen confidential complaints would have been made public. Consequently, because we know that leaving the confidentiality determination to filers is not a failsafe approach, LPS review would still be required for the Court to fulfill its obligation to do all it can to ensure that complaints that are required by law to be kept confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

OBJECTION NO. 51:

"Implementing this proposed system would not require the LPS to open up the complaint twice. Access could be provided on receipt before the LPS reviews the complaint, with the complaint only being opened once later as the LPS is able to tum their attention to the complaint. If the LPS for some reason were to decide that the initial designation of the case as "confidential" or "conditionally under seal" by the e-filer was erroneous, the LPS could simply access the existing drop-down security menu (as they currently do) and change the security level set in the system from "2" to "l," and thereby trigger an automated notice to thee-filer that the security level had been downgraded. Thus, the "single touch" approach favored by Mr. Yamasaki, as reflected in the excerpts of his deposition transcripts that I reviewed would be maintained." (ECF No. 89, Rosenberg Decl. ¶ 12, 6:8-18.)

GROUNDS FOR OBJECTION NO. 51:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of 1) OCSC's CCMS; 2) the functionality of CCMS with respect to designation of

confidential complaints or complaints that are to be sealed; and 3) whether and how CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programming or creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality, nor is he qualified to opine as to what may or may not be possible with respect to re-programming the system to add new features or functions. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers opinions outside area of expertise).

Furthermore, Dr. Rosenberg's opinion on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning

underlying his opinions. That is fatal. An expert must, at minimum, provide the basis for his scientific conclusions. *See, e.g.*, *Diviero*, 114 F.3d at 853. If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Dr. Rosenberg's opinions on these matters should also be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data considered by the witness in forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL 1398403, at *6 (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

In addition, Dr. Rosenberg's basic assertion that a check-box or push-button feature would be better is based on a demonstrably false premise – that filers

always comply with filing requirements regarding confidential complaints. OCSC has already established numerous examples where filers disregarded an express requirement to note confidential treatment on the caption page of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact number of these examples, CNS concedes that 13 confidential complaints would have been made public but for LPS review. ECF No. 84, CNS Response to OCSC SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS review, more than a dozen confidential complaints would have been made public. Consequently, because we know that leaving the confidentiality determination to filers is not a failsafe approach, LPS review would still be required for the Court to fulfill its obligation to do all it can to ensure that complaints that are required by law to be kept confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

OBJECTION NO. 52:

"In conclusion, it is my opinion that OCSC could better assure that e-filed complaints to be conditionally sealed or that must be kept confidential by statute are in fact kept inaccessible to the public by changing its e-filing user interface to require the filer to either check a box or make radio-button selections on the interface, which would designate whether public access should be allowed to the complaint or not. This would eliminate the additional possibility for human error that the present system poses by making the security of the complaint dependent on the LPS catching one of several specific key words or statutory code sections in the text-based comment box of OCSC's e-filing interface or on the face page of the complaint Such an upgrade to the current system would not increase the risk that

confidential or conditionally sealed complaints might be made accessible to the public. Such an upgrade would also allow the public to access any complaint that the filer's selections have coded as being appropriate for public access, in a timely manner after the e-filer submits the complaint to the court and before clerk review or other processing." (ECF No. 89, Rosenberg Decl. ¶ 13. 6:19-7:6.)

GROUNDS FOR OBJECTION NO. 52:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of 1) OCSC's CCMS; 2) the functionality of CCMS with respect to designation of confidential complaints or complaints that are to be sealed; and 3) whether and how CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg does not profess to have any knowledge of or familiarity with CCMS – because he has none – and thus cannot know its technological capabilities, functionality, and/or possibilities.

Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human Factors," and describes himself as "[a]n accomplished human factors engineer … specializing in analysis and design of mobile computing devices, complex systems, user centered design, information architecture, user experience…." ECF No. 89, Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any background or expertise in computer programming generally or in the programmingor creation of court case management systems specifically.

As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities and functionality, nor is he qualified to opine as to what may or may not be possible with respect to re-programming the system to add new features or functions. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers opinions outside area

of expertise).

Furthermore, Dr. Rosenberg's opinion on these matters should be excluded because they are not "reliable," as required for the admission of scientific expert testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate personal knowledge of OCSC's computer systems or that his opinions are based on scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may be shown by personal knowledge or scientific basis). And "[a]n opinion based on … unsubstantiated and undocumented information is the antithesis of the scientifically reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning underlying his opinions. That is fatal. An expert must, at minimum, provide the basis for his scientific conclusions. *See, e.g.*, *Diviero*, 114 F.3d at 853. If he does not, courts rightly disregard the opinions offered as "unsubstantiated and subjective, and therefore unreliable and inadmissible." *Id.* That is the proper course here.

Dr. Rosenberg's opinions on these matters should also be excluded because he failed to provide the necessary written disclosures under Federal Rule of Civil Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have applied them when an expert's testimony is offered to the court in connection with summary judgment motions, reasoning that in such situations, the expert has 'entered the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data considered by the witness in forming" his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness's compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes "none of the underlying data or observations" relied on by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr.

Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g.*, *id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL 1398403, at *6 (excluding testimony because expert "was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions").

In addition, Dr. Rosenberg's conclusion that a check-box or push-button feature would be better is based on a demonstrably false premise – that filers always comply with filing requirements regarding confidential complaints. OCSC has already established numerous examples where filers disregarded an express requirement to note confidential treatment on the caption page of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact number of these examples, CNS concedes that 13 confidential complaints would have been made public but for LPS review. ECF No. 84, CNS Response to OCSC SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS review, more than a dozen confidential complaints would have been made public. Consequently, because we know that leaving the confidentiality determination to filers is not a failsafe approach, LPS review would still be required for the Court to fulfill its obligation to do all it can to ensure that complaints that are required by law to be kept confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

IV. OBJECTION TO DEPOSITION OF JONATHAN FETTERLY

OBJECTION NO. 53:

"Attached hereto as Exhibit 16 are true and correct copies of excerpts from Sara Ochoa's deposition transcript relating to the issues raised in Defendant's Motion for Summary Judgment, and related exhibits.." (ECF No. 90, Declaration of Johnathan Fetterly ("Fetterly Decl.") ¶ 15, 3:13-15.)

GROUNDS FOR OBJECTION NO. 53:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

"It is insufficient for a party to submit, without more, an affidavit from [ ] counsel identifying the names of the deponent, the reporter, and the action and stating that the deposition is a 'true and correct copy.'" *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 774 (9th Cir. 2002). "Such an affidavit lacks foundation even if the affiant-counsel were present at the deposition." *See id.*

Here, because Exhibit 16 does not contain a signed court reporter certification page, *see* ECF No. 91, p. 901, Mr. Fetterly's declaration that the transcript is a "true and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 16 does not contain any exhibits.

OBJECTION NO. 54:

ECF No. 91, Exhibit 16 to Fetterly Decl. (pp. 749-901).

GROUNDS FOR OBJECTION NO. 54:

Not properly authenticated. Fed. R. Evid. 901.

"A deposition or an extract therefrom is authenticated in a motion for summary judgment when it identifies the names of the deponent and the action and includes the reporter's certification that the deposition is a true record of the testimony of the deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone v. Citicorp Credit Servs.,*

Inc., 60 F.Supp.2d 1040, 1045 (S.D. Cal. 1997) (excluding a deposition for failure to submit a signed certification from the reporter).

Here, Exhibit 16 does not contain a signed court reporter certification page. ECF No. 91, p. 901. Thus, the deposition transcript has not been properly authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 16 does not contain any exhibits.

OBJECTION NO. 55:

"Attached hereto as Exhibit 17 are true and correct copies of excerpts from Debbie Kruse's deposition transcript relating to the issues raised in Defendant's Motion for Summary Judgment, and related exhibits." (ECF No. 90, Fetterly Decl. ¶ 16, 3:13-15.)

GROUNDS FOR OBJECTION NO. 55:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

"It is insufficient for a party to submit, without more, an affidavit from [ ] counsel identifying the names of the deponent, the reporter, and the action and stating that the deposition is a 'true and correct copy.'" *Orr*, 285 F.3d 764, 774 (9th Cir. 2002). "Such an affidavit lacks foundation even if the affiant-counsel were present at the deposition." *See id.*

Here, because Exhibit 17 does not contain a signed court reporter certification page, *see* ECF No. 91, p. 1043, Mr. Fetterly's declaration that the transcript is a "true and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 17 does not contain any exhibits.

OBJECTION NO. 56:

ECF No. 91, Exhibit 17 to Fetterly Decl. (pp. 902-1043).

GROUNDS FOR OBJECTION NO. 56:

Not properly authenticated. Fed. R. Evid. 901.

"A deposition or an extract therefrom is authenticated in a motion for summary judgment when it identifies the names of the deponent and the action and includes the reporter's certification that the deposition is a true record of the testimony of the deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045 (excluding a deposition for failure to submit a signed certification from the reporter).

Here, Exhibit 17 does not contain a signed court reporter certification page. ECF No. 91, p. 1043. Thus, the deposition transcript has not been properly authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 17 does not contain any exhibits.

OBJECTION NO. 57:

"Attached hereto as Exhibit 18 are true and correct copies of excerpts from David Yamasaki's deposition transcript relating to the issues raised in Defendant's Motion for Summary Judgment, and related exhibits." (ECF No. 90, Fetterly Decl. ¶ 17, 3:21-23.)

GROUNDS FOR OBJECTION NO. 57:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

"It is insufficient for a party to submit, without more, an affidavit from [ ] counsel identifying the names of the deponent, the reporter, and the action and stating that the deposition is a 'true and correct copy.'" *Orr*, 285 F.3d at 774. "Such an affidavit lacks foundation even if the affiant-counsel were present at the deposition." *See id.*

Here, because Exhibit 18 does not contain a signed court reporter certification page, *see* ECF No. 91, p. 1198, Mr. Fetterly's declaration that the transcript is a "true and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's

statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 18 does not contain any exhibits.

OBJECTION NO. 58:

ECF No. 91, Exhibit 18 to Fetterly Decl. (pp. 1044-1198).

GROUNDS FOR OBJECTION NO. 58:

Not properly authenticated. Fed. R. Evid. 901.

"A deposition or an extract therefrom is authenticated in a motion for summary judgment when it identifies the names of the deponent and the action and includes the reporter's certification that the deposition is a true record of the testimony of the deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045 (excluding a deposition for failure to submit a signed certification from the reporter).

Here, Exhibit 18 does not contain a signed court reporter certification page. ECF No. 91, p. 1198. Thus, the deposition transcript has not been properly authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 18 does not contain any exhibits.

OBJECTION NO. 59:

"Attached hereto as Exhibit 19 are true and correct copies of excerpts from Jeff Wertheimer's deposition transcript relating to the issues raised in Defendant's Motion for Summary Judgment, and related exhibits." (ECF No. 90, Fetterly Decl. ¶ 18, 3:25-27.)

GROUNDS FOR OBJECTION NO. 59:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

"It is insufficient for a party to submit, without more, an affidavit from [ ] counsel identifying the names of the deponent, the reporter, and the action and stating that the deposition is a 'true and correct copy.'" *Orr*, 285 F.3d at 774. "Such an affidavit lacks foundation even if the affiant-counsel were present at the deposition."

See id.

Here, because Exhibit 19 does not contain a signed court reporter certification page, *see* ECF No. 91, p. 1302, Mr. Fetterly's declaration that the transcript is a "true and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 19 does not contain any exhibits.

OBJECTION NO. 60:

ECF No. 91, Exhibit 19 to Fetterly Decl. (pp. 1099-1302).

GROUNDS FOR OBJECTION NO. 60:

Not properly authenticated. Fed. R. Evid. 901.

"A deposition or an extract therefrom is authenticated in a motion for summary judgment when it identifies the names of the deponent and the action and includes the reporter's certification that the deposition is a true record of the testimony of the deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045 (excluding a deposition for failure to submit a signed certification from the reporter).

Here, Exhibit 19 does not contain a signed court reporter certification page. ECF No. 91, p. 1302. Thus, the deposition transcript has not been properly authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the related deposition exhibits are attached is false. The deposition transcript attached as Exhibit 19 does not contain any exhibits.

OBJECTION NO. 61:

"Attached hereto as Exhibit 20 are true and correct copies of excerpts from Michael Planet's deposition transcript in that matter relating to the issues raised in Defendant's Motion for Summary Judgment, and related exhibits." (ECF No. 90, Fetterly Decl. ¶ 19, 4:5-7.)

GROUNDS FOR OBJECTION NO. 61:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

"It is insufficient for a party to submit, without more, an affidavit from [ ] counsel identifying the names of the deponent, the reporter, and the action and stating that the deposition is a 'true and correct copy.'" *Orr*, 285 F.3d at 774. "Such an affidavit lacks foundation even if the affiant-counsel were present at the deposition." *See id.*

Here, because Exhibit 20 does not contain a signed court reporter certification page, *see* ECF No. 91, p. 1319, Mr. Fetterly's declaration that the transcript is a "true and correct copy" is insufficient to authenticate the exhibit.

OBJECTION NO. 62:

ECF No. 91, Exhibit 20 to Fetterly Decl. (pp. 1303-1333).

GROUNDS FOR OBJECTION NO. 62:

Not properly authenticated; inadmissible hearsay. Fed. R. Evid. 901; Fed. R. Evid. 801, 802.

"A deposition or an extract therefrom is authenticated in a motion for summary judgment when it identifies the names of the deponent and the action and includes the reporter's certification that the deposition is a true record of the testimony of the deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045 (excluding a deposition for failure to submit a signed certification from the reporter). Here, Exhibit 20 does not contain a signed court reporter certification page. ECF No. 91, p. 1319. Thus, the deposition transcript has not been properly authenticated and is therefore inadmissible.

Further, the deposition transcript and accompanying exhibits constitute inadmissible hearsay as out-of-court statements offered for the truth of the matters asserted.

OBJECTION NO. 63:

"The declarations filed as and comprising ECF Document Nos. 12 through 12-3 in this case are all true and correct copies of the declarations previously filed in the *Planet* case." (ECF No. 90, Fetterly Decl. ¶ 21, 4:19-21.)

GROUNDS FOR OBJECTION NO. 63:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Fetterly's declaration does not lay adequate foundation for declarations filed in another proceeding. It is not enough that Mr. Fetterly characterizes the declarations as "true and correct copies." *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1182 (9th Cir. 1988).

V. OBJECTIONS TO COURT REPORTER DECLARATIONS IN ECF NO. 12

OBJECTION NO. 64:

ECF No. 12 through ECF No. 12-3, Exs. 1-36 to RJN (p. 1-417).

GROUNDS FOR OBJECTION NO. 64:

Not properly authenticated; inadmissible hearsay; irrelevant. Fed. R. Evid. 901; Fed. R. Evid. 801, 802; Fed. R Evid. 401, 402.

These declarations were prepared for and were submitted in another proceeding. Given that Mr. Fetterly did not properly authenticate the declarations, they are inadmissible.

Further, the declarations contain inadmissible hearsay. *See* ECF No. 12, Abbott Decl. ¶ 9 ("The following is a description of procedures used at some of the courts covered by CNS reporters under my supervision."); ECF No. 12, Angione Decl. ¶ 8 (as a supervisor he "observed and experienced the procedures used by reporters in many of these courts to access and review new civil complaints"); ECF No. 12, Brown Decl. ¶ 5 (as a supervisor she "observe[d] CNS's procedures for reviewing new civil complaints received for filing in these courts."); ECF No. 12, Marshall Decl. ¶ 9 (as a supervisor he has "observed and experienced the procedures used by CNS's reporters in many of these courts to access and review new civil complaints received by those courts for filing."); ECF No. 12, Venza Decl. ¶ 19 (as

a supervisor she has "observed CNS reporters use the following procedures to review new civil petitions."). Thus, these out-of court-statements cannot be offered for their truth because they are not subject to cross-examination.

Finally, that other courts may provide a greater or lesser extent of access to complaints, without first conducting a confidentiality review, is irrelevant to whether timely access has been provided under the circumstances of *this* case by one of the largest and busiest trial court systems in the nation and under California law that obligates OCSC to protect litigant confidentiality. Indeed, none of the declarations indicate whether these courts conduct any confidentiality review before making new complaints publicly available. Nor does CNS offer any evidence showing that the referenced state courts have confidentiality requirements similar to those imposed by California law.

VI. OBJECTIONS TO OTHER COURTS' E-FILING RULES & COURT DOCKETS IN ECF NO. 92

OBJECTION NO. 65:

ECF No. 92, Exs. 1-9 to RJN (p. 5-52).

GROUNDS FOR OBJECTION NO. 65:

Irrelevant. Fed. R Evid. 401, 402.

As explained in OCSC's response to CNS's Requests for Judicial Notice, filed concurrently herewith, tat other courts' e-filing rules may require confidential filings to be filed in paper is irrelevant to whether timely access has been provided under the circumstances of *this* case by one of the largest and busiest trial court systems in the nation and under California law that obligates OCSC to protect litigant confidentiality. Indeed, none of the court rules indicate whether these courts conduct any confidentiality review before making new complaints publicly available nor correlate the purpose for filing in paper with protecting confidentiality. Further, CNS does not offer any evidence showing that the referenced courts have confidentiality

requirements similar to those imposed by California law.

OBJECTION NO. 66:

ECF No. 92, Exs. 10-13 to RJN (p. 53-77).

GROUNDS FOR OBJECTION NO. 66:

Contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 403.

As explained in the declaration by Sara Ochoa submitted in support of OCSC's reply brief and OCSC's response to CNS's Requests for Judicial Notice, both filed concurrently herewith, the court dockets for four Orange County Superior Court contained in Exhibits 10-13 are contradicted by other evidence in this matter, incomplete, misleading and prejudicial.

CNS cites these exhibits in response to OCSC's assertion in its Statement of Uncontroverted Facts and Conclusions of Law ("SUF") for the proposition that "[a]t most, 13 of the cases listed in Exhibits A and B to the Ochoa Declaration and referred to in Paragraph 21 of the Ochoa Declaration represent case-initiating filings where an LPS properly kept a document confidential based on LPS review." ECF No. 84, ¶ 21. CNS appears to contend that because a case initiating document is currently available on the public dockets in these matters, OCSC's statement is somehow untrue. But CNS's position is unsupported.

In some of the cases that CNS cites, certain attachments to the complaints *were properly* filed under seal and remain under seal; and in one case that CNS cites, an unredacted version of a complaint *was properly* filed under seal and remains under seal, while the redacted version of the complaint is available on the public docket. Ochoa Decl. ISO Reply ¶¶ 19(a)-(c), 20. Thus, CNS's reliance on these cases is inapposite. These cases do not undermine OCSC's position that but for LPS review, the attachments to the complaints or the unredacted version of a complaint would have been publicly available. *See id.*

Dated: January 16, 2018

JONES DAY

By: /s/ Robert A. Naeve
Robert A. Naeve

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